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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,077	06/20/2003	William H. Fort	PCB105	7049
33047 7590 04/16/2009 GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC 55 SOUTH COMMERCIAL STREET MANCHESTER, NH 03101				
EXAMINER KRAUSE, JUSTIN MITCHELL				
ART UNIT 3656		PAPER NUMBER		
MAIL DATE 04/16/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/601,077

Applicant(s)

FORT ET AL.

Examiner

JUSTIN KRAUSE

Art Unit

3656

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9, 10, 12, 13 and 23-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9, 10, 12, 13 and 23-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9, 10, 12, 13, and 23-29 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 9, the scope of the limitation, "wherein said plunger is extended and compressed between said lever roller and said stationary roller in said extended position of said plunger" cannot be determined. It is unclear how the plunger can be "extended and compressed" simultaneously. Alternatively, the limitation may be read as two limitations, "wherein the plunger is extended", "and compressed between said lever roller and said stationary roller in said extended position of said plunger, which is a double inclusion, since "in said extended position of said plunger" has the same meaning as "wherein said plunger is extended".

Regarding claim 23, the phrase, "in said extended position of said plunger, said plunger is extended and compressed between said lever bearing surface and said stationary bearing surface", is indefinite, because "in said extended position of said plunger, said plunger is extended" is a double inclusion. Also, it is unclear how the plunger could be "extended and compressed" simultaneously.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 10, 12, 23, 25, 16, 27 and 28, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kataumi et al (US Patent 5,421,792) in view of Smale et al (US Patent 5,566,581).

To the extent best understood, the claims are being interpreted to read as, "wherein said plunger is extended", "and compressed between said lever roller and said stationary roller".

Kataumi discloses an actuator comprising:

-A base plate (11)

-A latching lever (42b) pivotably mounted to the base plate by a pin (45) pivotable between first and second positions and comprising a lever bearing surface (for pin 31)

-A stationary bearing surface (43)

-A solenoid (44) mounted to the base plate (col 4, lines 65-69), comprising a plunger (48) movable between an extended position and a retracted position, in the first position, in the retracted position of the plunger, the lever is not blocked from pivoting between the first and second positions (col 5, lines 53-col 6 line 4).

Kataumi does not disclose the plunger compressed between the lever bearing surface and the stationary bearing surface.

Smale teaches a shift lock actuator including a solenoid (50) with a plunger (56) which is compressed between a lever bearing surface and a stationary bearing surface (see figure 3, the plunger engages the horizontal surface above numeral "56" and the flat surface on latch bar 34) in an extended position of the solenoid for the purpose of locking the shift lever in reverse until the plunger is retracted (Col 4, lines 24-25).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kataumi and replace the solenoid mechanism disclosed therein with the solenoid arrangement in Smale, where the plunger is compressed between a lever bearing surface and a stationary bearing surface, for the purpose of restraining movement of the shift lever as taught by Smale.

Regarding claim 25, the lever of Kataumi is biased towards one of the first and second positions.

Regarding claim 10 and 26, a torsion spring (46) biases the lever toward the first position.

Regarding claim 27, the plunger is biased towards the extended position when the solenoid is in an unenergized state (Col 5, lines 63-69).

Regarding claim 12 and 28, mechanical switch (microswitch, not shown, described in col 5, line 54) is closed when the lever is in the first or second position.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kataumi in view of Smale et al as applied to claim 23 above, further in view of Dörr et al (US Patent 5,379,872).

Kataumi does not disclose one of said lever bearing surface and said stationary bearing surface comprising a roller.

Dörr teaches an actuator with a roller (9), which allows the actuator to move with low forces (Col 4, lines 42-44).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the teachings of Kataumi and add a roller as taught by Dörr to one of, or both of the lever bearing surface (13) and the stationary bearing surface (24) to reduce friction (Col 3, line 15) and allow the actuator to be moved with low forces.

Claim 13 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kataumi in view of Smale as applied to claim 23 above, further in view of Mochida (US Patent 4,473,141).

Kataumi does not disclose a wedge shaped portion on the plunger.

Mochida teaches a wedge shaped portion of a plunger (31a) for the purpose of forcing the lever bearing surface towards one of the first and second positions, preventing the lever from being jammed in an intermediate position. (Col 3, lines 49-51).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the plunger of Kataumi with a wedge shaped portion to make the engagement with the lever bearing surface easier by providing a sloped surface for it to travel on and biasing it towards the first or second position, preventing the lever bearing surface from becoming jammed in an intermediate position.

Response to Arguments

Applicant's arguments filed March 30, 2009 have been fully considered but they are not persuasive.

In light of the indefiniteness of the claims, the claims have been examined to the extent which they are understood. The claims have been interpreted with the meaning stated above.

Regarding applicant's argument that one of ordinary skill in the art would not be motivated to combine Kataumi and Smale because they teach two fundamentally different and opposite ways of operation, both devices function by moving an element through the use of a solenoid to restrict the movement of another member of the device. Kataumi and Smale are alternative methods of performing the same movement and achieving the same result, i.e. locking or restricting the movement of another member. One of ordinary skill in the art would be motivated to combine the teachings of Kataumi and Smale since the substitution of one known locking mechanism for its equivalent is within the level of ordinary skill in the art.

Conclusion

This is a continued examination of applicant's earlier Application No. 10/601,077. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN KRAUSE whose telephone number is (571)272-3012. The examiner can normally be reached on Monday - Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Justin Krause/
Examiner, Art Unit 3656

/Thomas R. Hannon/
Primary Examiner, Art Unit 3656